

REMARKS

In the non-final office action mailed February 24, 2006, claims 1-56 were pending. Claims 49-56 were withdrawn as being directed to a non-elected invention and are cancelled in this response. Claims 29-31 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 1-28 and 32-48 stand rejected. Claims 1, 17, 21 and 41 have been amended in this response and claims 57-64 have been added. Reconsideration of the present application including claims 1-48 and 57-64 as amended is respectfully requested.

A restriction requirement setting forth an invention in Group I, claims 1-48 and Group II, claims 49-56 is acknowledged. Affirmation of the election of Group I, claims 1-48 is hereby made. Claims 49-56 have been cancelled without prejudice to pursuit in a divisional application.

Claims 1-7, 15 and 16 were rejected under 35 US 102(b) as being anticipated by U.S. Patent No. 1,400,616 to McCrory. Amended claim 1 recites, among other features, "wherein said first and second portions of said frame each include a recess to receive clamping devices coupled to respective ones of said retractors about said frame with said clamping devices being slideable from said respective recess along a respective one of said first and second portions of said frame for attachment to said respective portion of said frame at a selected position therealong spaced from said recess." McCrory, in contrast, discloses a frame with through-holes to axially receive threaded stems through the frame at selected positions about the frame. Therefore, claim 1 and claims 2-7, 16 and 16 depending therefrom distinguish McCrory. Withdrawal of this basis of the rejection is respectfully requested.

Claims 41, 44 and 45 were rejected under 35 USC 102(b) as being anticipated by DE 8704901 to Kluger. Amended claim 41 recites, among other features, "first and second adjustment mechanisms coupled to respective ones of said first and second distractor mechanisms adjacent a proximal end of said respective distractor mechanism, said adjustment mechanisms each including a first condition in locking engagement with said respective distractor mechanism to fixedly secure said distractor mechanism relative to said frame, said adjustment mechanisms further each including a second condition in pivotal engagement with said respective distractor mechanism to permit proximal ends of said distractor mechanisms to pivot relative to said adjustment mechanism about said distal ends thereof toward and away from said frame." Kluger, in contrast, discloses "frame" 2 and first and second "distractor

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mechanisms" 2, 4 that all move together when the first and second "distractor mechanisms" 2, 4 are moved about the pivoting portions 5. Accordingly, there does not appear to be any pivoting of "distractor mechanisms" 2, 4 toward and away from any frame since the frame and mechanisms 2, 4 are rigidly coupled to one another. Nor is there disclosed any adjustment mechanism that locks the distractor mechanism and is also pivotally engaged to the distractor mechanism to permit such movement. Accordingly, claim 41 and claims 44, 45 depending therefrom are allowable and withdrawal of this basis of the rejection is respectfully requested.

Claims 8-11, 13, 17, 21-27, 32, 33, 36-43 and 46-48 were rejected under 35 USC 103(a) as being unpatentable over McCrory in view of U.S. Patent No. 5,728,046 to Mayer. Claims 8-11 and 13 depend directly or indirectly from claim 1 and are believed allowable at least for the reasons claim 1 is believed allowable. Accordingly, withdrawal of this basis of the rejection of claims 8-11 and 13 is respectfully requested.

Claim 17 has been amended and recites first and second distractor mechanisms and "further comprising at least one adjustment mechanism engaged to at least one of said first and second distractor mechanisms at a pivoting coupling location adjacent a proximal end of said at least one distractor mechanism and a clamping device movable along said frame and operable to clampingly engage said adjustment mechanism to said frame." In McCrory, the threaded stems 8 are fixed relative to the retaining hooks 12 at their proximal ends. Mayer et al. also discloses an arrangement where threaded spindle 29 is fixed relative to the retractor body 32 at the location adjacent the proximal end of body 32 where they are coupled to one another. Accordingly, neither of the references, either or alone or in combination with one another, teaches or suggests the elements recited in claim 17, and withdrawal of this basis of the rejection of claim 17 and claims 21-27, 32, 33, and 36-40 is respectfully requested.

Claim 41 has been amended and recites, among other features, "first and second adjustment mechanisms coupled to respective ones of said first and second distractor mechanisms adjacent a proximal end of said respective distractor mechanism, said adjustment mechanisms each including a first condition in locking engagement with said respective distractor mechanism to fixedly secure said distractor mechanism relative to said frame, said adjustment mechanisms further each including a second condition in pivotal engagement with said respective distractor mechanism to permit proximal ends of said distractor mechanisms to pivot relative to said adjustment mechanism about said distal ends thereof toward and away from

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said frame." In McCrory, the threaded stems 8 are fixed relative to the retracting hooks 12 at the location adjacent the proximal end of the hooks 12 where they come together. As the stem 8 is moved through the frame through-hole, the proximal and distal ends of the hooks 12 follow the stem such there is pivoting of the proximal end about the distal end toward or away from the frame.

Mayer et al. fails to remedy the deficiencies of McCrory since it also discloses an arrangement where threaded spindle 29 is fixed relative to the retractor body 32. As the location of the body 32 is adjusted relative to the frame with spindle 29, the proximal and distal ends of the body 32 also move together toward or away from the frame such that there is no pivoting of the proximal end of body 32 about the distal end of body 32 or relative to the bone pins toward and away from the frame. For example, col. 4, lines 7-11 of Mayer disclose that adjustment of the nuts 30 and 31 repositions the support feet 39, 40 and the vertebral bodies engaged thereto. Accordingly, neither of the references, either or alone or in combination with one another, teaches or suggests the elements recited in claim 41, and withdrawal of this basis of the rejection of claim 41 and claims 42-43 and 46-48 is respectfully requested.

Claims 12, 14, 18-20, 28, 34 and 35 were rejected under 35 USC 103(a) as being unpatentable over McCrory in view of Mayer and further in view of U.S. Patent Application Publication No. 2002/0161368. These claims depend from claims that are believed allowable. Accordingly, withdrawal of this basis of the rejection of these claims is respectfully requested.

New claims 57-64 are presented herewith and include subject matter not disclosed or suggested in the cited references. Accordingly, allowance of these claims is respectfully requested.

Reconsideration of the present application as amended and including claims 1-48 and 57-64 is respectfully requested. The Examiner is encouraged to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:



Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333 (Direct)